

EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CASE NO. DOMHCV2014/0342

BETWEEN:

DR. VIVIAN MOISE

Claimant/Applicant

and

ATTORNEY GENERAL
OF THE COMMONWEALTH
OF DOMINICA

Defendant/Respondent

Appearances:

Ms. Danielle Edwards of David Bruney Chambers for the Claimant/Applicant

Ms. Tameka Hyacinth of the Attorney General's Chambers for the Attorney
General of the Commonwealth of Dominica

2014: November 7th

2015: March 11th

DECISION

[1] THOMAS, J. (Ag.): On 15th October 2014, the Claimant/Applicant filed a Notice of Application for Assessment of Interest and Costs. The following orders are sought:

- 1) That the Applicant is entitled to interest on the Order of the High Court of Justice in the Commonwealth of Dominica pursuant to Section 12 Land Acquisition Act Chapter 53.2 dated June 13th, 2013.
- 2) That the Respondent shall pay to the Applicant interest in the sum of EC\$16,238.74.

Grounds

[2] The grounds stated in the Application are as follows:

- i. That by Order of the High Court of Justice in the Commonwealth of Dominica pursuant to Section 12 Land Acquisition Act Chapter 53:2 dated June 13th, 2013 the Respondent was ordered to pay to the Applicant damages and compensation in the sum of \$605,000.00 or six hundred and five thousand dollars.
- ii. That by said order dated June 13th, 2013 no order was made as to interest on said sum of \$605,000.00 or six hundred and five thousand dollars.
- iii. That by Section 7 of the Judgments Act Chap 4:70 of the Laws of the Commonwealth of Dominica “every judgment debt shall carry interest at the rate of 5% a year from the time of entering up the judgment, or from the time of the commencement of this Act in Cases of judgments then entered upon and not carrying interest, until the judgment is satisfied, and the interest may be recovered in the same manner as the amount of the judgment.”
- iv. That said order dated June 13th, 2013 is governed by Section 7 of the Judgments Act Chap 4:70.
- v. That the Applicant is entitled to interest at the rate of 5% a year from the time of the entering up said order pursuant to section 7 of the Judgments Act Chap 4:70.
- vi. The Applicant has been unsuccessful in his attempts to negotiate the payment of interest on said Order with the Respondent.
- vii. That the Applicant is desirous of having interest and costs assessed in respect of this matter.

Evidence

[3] The Applicant, in his Affidavit in Support outlines the history of the acquisition of his property by the Government of the Commonwealth of Dominica, the award of damages and compensation in the amount of \$605,000.00, the payment of the said award of damages and compensation, the amount of \$16,238.74 being

outstanding interest as of 8th April 2014, and the attempts made to negotiate the payment of the said interest with the Respondent which have been unsuccessful.

- [4] Marcus Lestrade, Director of Surveys and Commissioner of Lands of the Commonwealth of Dominica, in his Affidavit in Response, also details the history of the acquisition of the Applicant's land and the payment of compensation. The Affiant deposes further that the Applicant is not entitled to interest on the award by the Board as none was awarded by the Board. It is deposed further that the Applicant has not appealed and the time for so doing has expired.
- [5] Finally, the Affiant deposes that: "I have been advised by my attorney and do verily believe that section 7 of the Judgments Act Chap 4:70 does not apply to the decision of the Board."

Affidavit in Response

- [6] The Applicant in his Affidavit in Response concentrates on the nature of the Order of the Board of Assessment, made pursuant to the Land Acquisition Act¹, and its relation to the Judgments Act². In the end the Applicant's contention is that: "...I am informed by my said Solicitors that my rights pursuant to the subject application are dictated by section 7 of the Judgments Act ...".

Issues

- [7] The following issues for determination are as follows:
1. Whether the Board of Assessment properly constituted under section 13 of the Land Acquisition Act³ sits as a division of the High Court of Justice in the Commonwealth of Dominica?
 2. Whether the High Court has jurisdiction to grant or assess interest to the Claimant/Applicant where the Board of Assessment did not grant interest under the Land Acquisition Act⁴?
 3. Who is liable in costs?

¹ Chap. 53:02

² Chap. 4:70

³ Ibid

⁴ Ibid

Issues Nos. 1 and 2

(1) Whether the Board of Assessment properly constituted under section 13 of the Land Acquisition Act⁵ sits as a division of the High Court of Justice in the Commonwealth of Dominica; and (2) Whether the High Court has jurisdiction to grant or assess interest to the Claimant/Applicant where the Board of Assessment did not grant interest under the Land Acquisition Act?

Submissions

[8] The submissions on behalf of the Claimant/Applicant begins with the bold and comprehensive statement that: "The 'Board of Assessment' properly constituted under the LAA sits as a division of the High Court of Justice pursuant to the Eastern Caribbean Supreme Court (Dominica) Act, Ch. 4:02".

[9] The submissions continue in this mode:

"B. The Board properly constituted pursuant to the LAA has all the fundamental characteristics of a division of the High Court of Justice. The High Court Judge of the Commonwealth of Dominica sitting as Chairman of said Board has a right of veto over the decisions of other Board Members per Section 17 (3) of the LAA. Parliament preserves (1) the status quo of the Judiciary, (2) the status of the High Court Judge and (3) the role of the High Court Judge under the LAA. The authority exercised by the Resident Judge sitting as Chairman of said Board is unfettered by lay members over whom he holds the ultimate veto, thus maintaining the hegemony of the judiciary within the jurisdiction of the High Court and the judiciary's role within the LAA. Decisions emanating from the Board of Assessment are decisions of the Resident High Court Judge, or a puisne Judge so nominated by the Resident Judge. The Resident Judge thus exercises all the authority of his judicial appointment with all the rights and privileges arising therefrom at all material times."

[10] The remainder of the submissions are wide and varied on behalf of the Claimant/Applicant and go on to reflect the following contentions: the 'Award' of the Board of Assessment is an "Order" of the High Court of Justice under the OECS CPR 2000; pursuant to section 17 (4) of the LAA a direct right of appeal to the Court of Appeal lies from decisions of the Board of Assessment and Rule 62.1(2) defines 'court below' as the Court or tribunal from which the appeal is brought; Parliament intended the Board to have the powers of a High Court Judge

⁵ Supra

when it re-instated the jurisdiction of the High Court in 1969 per Section 3 (1) of the Eastern Caribbean Supreme Court (Dominica) Act⁶, the Board, properly constituted pursuant to the LAA has the fundamental characteristics of the High Court of Justice, if one accepts that the Eastern Caribbean Supreme Court Act was enacted to confer jurisdiction upon the Eastern Caribbean Court in any cause, action or matter arising in the state and for other matters connected therewith, then the powers of the LAA must be interpreted in a manner which is consistent and compatible with the aims of the Eastern Caribbean Supreme Court Act, and not in a manner which defeats its aim and central purpose⁷; without fear of contradiction, the proceedings before the Board of Assessment properly constituted under the Land Acquisition Act⁸ are governed by the Civil Procedure Rules 2000 and the fact that the OECS CPR 2000 regulates proceedings pursuant to LAA lends legitimacy to this argument that the Judgments Act governs Awards of the Board of Assessment.

[11] As far as the Defendant is concerned the early submissions center on the following: the essential issue to be determined is whether the High Court has the jurisdiction to essentially vary the order of the Board of Assessment; and the Claimant seeks the court to award interest at the rate of 5% where the Board did not make an award of interest.

[12] After the examination of the jurisdiction of the Board of Assessment under section 11 of the LAA, the power of the Minister to appoint the Board of Assessment, the power of the Board to award compensation and the right to appeal decisions of the Board the following is submitted:

“10. It is not in dispute that in the instant case we are dealing with a unanimous decision of the Board made under the hand of the Chairman. Section 17 (4) grants a right of appeal to any party aggrieved by the decision of the Board. From the subsection it can be gleaned that the appeal lies to the Court of Appeal since the subsection states that the decision of the Board shall for the purposes of an appeal be deemed to be a decision of a Judge of the High Court sitting as a Court of first instance. It is trite law in our

⁶ Chap. 4:02

⁷ For the proposition the case of R (on the application of Al-Skeini) v Secretary of State [2007] UKHL 26 is cited

⁸ Chap. 53:02

jurisdiction that an appeal of a decision of a High Court Judge sitting in the first instance lies to the Court of Appeal. Indeed, this is supported by the numerous cases to the Court of Appeal appealing decisions of the Board of Assessment⁹.

11. Therefore, any alteration to the award of compensation made by the Board, which is the *decision* of the Board, must be by means of an *appeal* to the Court of Appeal. To ask the High Court, sitting as a court of first instance to grant interest to the Claimant when no such interest was granted by the Board is in effect asking the High Court sitting in first instance to vary the decision of the Board. The Respondent submits that the statutory right of appeal lies to the Court of Appeal and according the High Court does not have jurisdiction to vary the order of the Board of Assessment."

[13] Finally, in terms of the provisions of the Land Acquisition Act¹⁰ and the Judgments Act reliance is placed on the maximum *generalibus specialia derogant*¹¹ to say , in summary, that the Judgments Act is a general enactment while the other a special purpose and, as such, the general enactment cannot derogate from the special enactment.

Reasoning

[14] On account of the legal and constitutional proximity of both issues, both be dealt with simultaneously.

[15] The issue turns almost entirely on the doctrine of statutory interpretation having regard especially to the parliamentary intent with respect to the two enactments in issue. Also relevant is the Constitution¹² of the Commonwealth of Dominica and the doctrine of the separation of powers.

[16] The Claimant's contention that the Board of Assessment properly constituted under section 13 of the Land Acquisition Act is a division of the High Court. But the proposition only has to be stated to be rejected for fundamental reasons. The first is that the appointments to the Board of Assessment are made by the Minister responsible for lands. This immediately offends the rule, as illustrated by the Privy

⁹ In this regard the cases of Attorney General of the Commonwealth of Dominica v Jacqueline Theodore DOMHCVAP 2008/009; HMB Holdings Ltd v Attorney General of Antigua and Barbuda and David Matthias ANUHCVP 2010/007, are cited

¹⁰ *supra*

¹¹ The authority cited for this proposition is: Bennion on Statutory Interpretation, 5th ed. @ p. 1164

¹² Chap. 1 Laws of Dominica

Council, in *Hinds v. The Queen*¹³ that only persons properly appointed by the relevant appointing authority can exercise judicial functions in order to avoid a conflict with the separation of powers doctrine which is always fatal. The fact that a Resident Judge sits on a Board as Chairman is of no moment since he is not appointed by the Judicial and Legal Services Commission to sit on the Board. More than that two other persons sit on the Board, which compounds the Claimant's proposition even further. Another compounding fact is that person, without qualifications to be a Judge, are to be appointed to the Board.

[17] To complete the determination on the issue, the jurisdiction of the Board and that of the High Court need to be contrasted.

[18] Section 11 of the Land Acquisition Act ¹⁴ defines the jurisdiction of the Board in these terms:

“11 (1) All questions and claims relating to the payment of compensation under this Act and to the appointment of such compensation shall, save as is hereinafter provided, be submitted to a board of assessment to be appointed in each case in accordance with the provisions of section 12.

(2) A board of assessment shall have full power to assess, award and apportion compensation in such cases, in accordance with the provisions of this Act.”

[19] In contrast sections 6 to 9 of the Eastern Caribbean Supreme Court (Dominica) Act¹⁵ provide as follows:

“6. (1) There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Supreme Court Ordinance or by any law of the Parliament of Dominica or by any other law for the time being in force in Dominica.

(2) Such jurisdiction includes-

(a) the jurisdiction and all the ministerial powers, duties and authority incidental to such jurisdiction which were vested in or capable of being exercised by all or any one or more of the Judges of the former Supreme Court sitting in Court, in Chambers or elsewhere when acting as Judges, or as a

¹³ [1975] 24 WIR 326. Also applied in *Scantlebury v. R* 68 WIR 88 and *AG of Grenada v Coard* [2005] 68 WIR 289

¹⁴ *Supra*

¹⁵ Chap. 4:02

Judge, pursuant to any written law for the time being in force in Dominica;

(b) all the powers given to the former Supreme Court or to any Judge or Judges thereof by any written law for the time being in force in Dominica.

7. (1) The High Court shall have and exercise within the State the same jurisdiction and the same powers and authorities incidental to such jurisdiction as may be vested in the High Court of Justice of England on 2nd November 1978.

(2) The High Court shall have and may exercise in relation to the custody of the persons and estates of persons suffering from a mental disorder in the State, all such jurisdiction as vested in England in the Lord Chancellor or other person or person entrusted by Her Majesty with the care and commitment of such persons and estates on 2nd November 1978.

8. (1) The High Court is hereby declared to be a Court of Admiralty....”

[20] It is therefore clear to the court that by virtue the separation of powers doctrine and the jurisdiction and powers of the Board of Assessment and the High Court, respectively even if it is properly constituted cannot sit as a division of the High Court.

[21] With respect to the second issue the answer thereto follows logically from the determination above. This would include the award or failure to award interest or compensation granted.

[22] Beyond the foregoing, learned counsel for the Respondent submits that the matter of the award of interest under section 7 of the **Judgments Act** and under section 21 of the **Land Acquisition Act** are two different regimes. And after detailing section 7 of the **Judgments Act** and section 21 of the **Land Acquisition Act** the following is submitted:

“17. A number of differences can be seen between section 7 of the **Judgments Act** and section 21 of the **Land Acquisition Act**. It is apparent that section 21 provides for a higher rate of interest than section 7, the period from which interest is payable is also different in the two enactments. In section 21 interest is payable from the time the authorized officer enters into possession while in section 7 interest is payable from the date of the judgment. The entitlement to interest is also different. In section 7 interest automatically attached while in section 21 the discretion whether

or not to grant interest bestowed by Parliament upon the Board of Assessment.

18. It is therefore clear that section 21 of the Land Acquisition Act is specific enactment providing specifically for a situation where compensation is awarded to a landowner from whom land was compulsorily acquired and therefore must be applied to a situation where compensation was awarded to a landowner from whom land was compulsorily acquired. The specific section 21 of the Land Acquisition Act must override the general section 7 of the Judgments Act.”

[23] The court agrees with the foregoing submissions on behalf of the Respondent and would add the following: section 7 of the Judgments Act speaks of ‘judgment debt’ while section 21 of the Land Acquisition Act speaks of an ‘award of compensation’. This leads to the inference or principle that an award of interest on a judgment debt is the province of a High Court Judge sitting as such and the rate of interest is 5% from the date of the Judgment. On the other hand, in the case of an award it is 6% from a date much prior to the award. The second point is that based on the premise that an award by the Board is not a decision of the High Court, Parliament in section 17 (4) of the Land Acquisition Act creates a legal fiction by deeming, “...the decision of the Board to be a final judgment or decision of a Judge of the High Court sitting as a Court of first instance.” This is the manner in which the right of appeal to the Court of Appeal is created- *cadit quaestio*.

Issue No. 3

Who is liable in costs?

[24] The Claimant having failed to obtain the Orders sought, must pay costs of \$1,500.00 to the Defendant.

ORDER

[25] IT IS HEREBY ORDERED as follows:

1. The Claimant’s application seeking an assessment of interest by the High Court fails because:

- (a) The Board of Assessment constituted under section 13 of the Land Acquisition Act cannot be as a division of the High Court as this would offend against the separation of powers doctrine enshrined in the Constitution of the Commonwealth of Dominica and enunciated in *Hinds v. R.*
 - (b) The jurisdiction of the Board of Assessment as contained in section 11 of The Land Acquisition Act is peculiar to the Board and differs from that of the High Court as set out in sections the 6 to 9 of the Eastern Caribbean Supreme Court (Dominica) Act.
 - (c) By virtue of section 17 of the Land Acquisition Act the matter of the award of interest is consequent on an award of compensation and the discretion is vested exclusively in the Board; and the proper court for such an award is the Court of Appeal by virtue of the legal fiction created by section 17 (4) of the Land Acquisition Act a decision of the Board is deemed to be a final judgment or decision of the High Court.
2. The Claimant must pay costs of \$1,500.00 to the Defendant.

.....
ERROL L. THOMAS
HIGH COURT JUDGE [Ag.]